

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Technical Requirements to Enable Blocking
 of Video Programming Based on Program
 Ratings)

ET Docket No. 97-206

Implementation of Sections 551(c), (d) and
 (e) of the Telecommunications Act of 1996)

To: The Commission

COMMENTS OF OKTV™(Our Kids TV)**SUMMARY**

Section 551 of the 1996 Telecommunications Act establishes the compelling public interest in providing parents with timely information and technology to help them protect their children from potentially harmful television programs. To implement this Congressional intent, the Commission proposes to establish rules to enable distribution of multiple ratings to actuate parent-controlled blocking technology in television receivers. This will also provide parents with access to ratings services alternative to the industry's. In addition to advancing the purposes of Section 551, such provisions further the objectives of related public policies involving competition, diversity of information, public safety and health, and First Amendment values. The Commission should stand firm behind its proposed rules supporting an open communication system for multiple rating services.

Regarding costs and complexities of a national communication system providing

only for industry ratings compared with one providing additionally for independent ratings, the differences are minor and clearly offset by the public interest in providing parents with choices, in particular a choice of a rating service developed from scientific research and independent of commercial or political considerations. Clearly, the industry's free use of the public airwaves is more than adequate compensation for the minimum public interest burden which the industry may incur in providing parental access to independent child protection rating systems.

Regarding specific technical issues, the most important are those related to providing independent rating services with access to line 21 in order to actuate blocking technology in TV receivers. EIA Standard 608 and its Amendment 744 provide acceptable basic protocols for use by independent services. As detailed in Appendix A hereto, an extension of EIA 744 will permit transmission of up to seven independent services in addition to industry services. It is highly unlikely that more than a very few independent services will be developed, at least in times of analog television. First, the costs of developing, marketing and operating an independent system are major. Second, the number of independent systems will be limited because use of line 21 must serve primarily the compelling public interest in child protection, and not, religious or other societal values.

Secondly, the consumer interface in television receivers must provide parents with (a.) a convenient choice among multiple ratings, (b.) a choice among age-related and content rating classifications, and (c.) means for overriding the system at any time.

A third requirement is that parents be able to call on-screen the rating information continuously encoded on line 21. Both the television industry and OKTV have asked that the Commission establish rules for such a capability in the consumer interface of TV receivers. This will provide parents timely access to ratings information more conveniently than in-video displays for 15 seconds only at the beginning of

programs. Also, such in-video displays both attract children to “forbidden fruit” and deter certain advertisers who might otherwise place their message in the program. However, CEMA objects to such a provision on grounds that the Commission lacks authority, an objection which OKTV refutes in a legal commentary (Section X of these Comments).

As for operational considerations, Commission rules must provide that independent codes be inserted at a program source along with industry codes provided independent rating services make them available. Regarding questions of how independent services will obtain operational access to programs for purposes of evaluation, OKTV currently believes that an independent service can cope with these problems without the need for Commission rules. However, if serious difficulties arise in practice, an independent service is presumably free to ask the Commission to revisit this issue in the future.

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COMMENTS OF OKTV™ (Our Kids TV)

I. INTRODUCTION

The Children's Television Consortium, doing business as OKTV™ (Our Kids TV), is a non-profit, non-stock Delaware Corporation approved by the Internal Revenue Service as a 501 (c)(3) charitable organization with principal offices at 218 West Main Street, Hyannis, MA. 02601.

OKTV's program has been previously described in comments filed on October 13, 1995 in MM Docket No. 93-48 (Policies and Rules Concerning Children's Television Programming), in comments filed April 7, 1997 and Reply Comments filed May 8, 1997 in CS Docket No. 97-55 (The Industry Proposal for Rating Video Programming).

Earlier OKTV filings are incorporated herein by reference. They included comments on (a.) relevant public interest and policy considerations, (b.) the OKTV rating system and (c.) the technical feasibility of distributing multiple rating systems

over the national television infrastructure.

Our present comments discuss technical issues related to providing parents access to independent ratings for the purpose of establishing that the benefits for children and parents, together with the policy and public interest advantages, substantially outweigh concerns about minor technical complexities and incremental costs. We also comment about how such concerns and how industry concerns about lost advertising revenues can be minimized. In any event, such concerns by those using the public airwaves for private purposes are clearly overridden by the compelling public interest in child protection, particularly if Commission regulations are narrowly tailored to help parents protect their children from risks of harm from television programs in accordance with the Congressional purposes set forth in Section 551 of the 1996 Act.

II. SUMMARY OF EARLIER OKTV COMMENTS

(a.) Public Interest and Policy Considerations

In our earlier filings, the argument was made that the compelling government interest in helping parents protect their children from potentially harmful programs as articulated in Section 551 of the 1996 Act, would be substantially furthered if parents are provided convenient access to ratings alternative to industry ratings and independent of commercial or political influence. Further, in providing parents access to multiple ratings, other public policy objectives will be advanced, including those related to competition and anti-trust, diversity of information, public safety and health and the First Amendment.

These viewpoints are consistent with the rules proposed by the FCC in its NPRM of September 25 . Particularly gratifying are the Commission's proposals that (1) distribution of multiple ratings be provided for, (2) TV distributors be prohibited from deleting rating codes from line 21, (3) except for closed captioning, child protection ratings would have priority over other extended data uses of line 21 of the VBI and (4) technical comments related to "V-chip" issues were being requested by the Commission before a final determination in Docket 97-55 whether the industry rating proposal is "acceptable." Regarding the latter point, we believe that the Commission should not determine that the industry rating proposal is "acceptable" unless it also establishes standards for a communications system and blocking technologies which will provide parents access to independent rating systems in addition to the industry system.

(b.) The OKTV Rating System

The OKTV system is free of commercial or political influence and is based solely on credible evidence and analysis of the extensive medical and social research concerning the risks of harm to children in each stage of development. Our analysis has been performed by a multi-disciplinary group of specialists in medical and social research, pediatrics, child psychiatry, child psychology, education and TV production. OKTV is a member of the Coalition of Medical and Health Organizations on TV Ratings convened by the American Medical Association. Other members include the American Academy of Pediatrics, the American Psychiatric Association, the American Psychological Association and the American Academy of Child and Adolescent Psychiatry. Thus, collaboration is under way to develop a national child health-based rating system based on scientific research. To give parents convenient access to such ratings will require Commission regulation of line 21 for distribution of independent rating systems.

It is important to distinguish this evolving health-based system from the two commercially-based systems, that of the TV industry and of MPAA. To our knowledge, individual industry networks have not developed ratings incorporating results of health-based research to any depth, certainly not for application in a consistent manner across all networks. The primary interest of each member of private industry is to serve its particular customers, shareholders and employees, and only secondly to serve the common public interest. This tension between private and public interest will not be easily reconciled.

The non-profit program of OKTV clearly defines a system providing consistency among trained raters of six content categories (violence, horror, language, sex, nudity, illegal and harmful behavior) as they affect harm to children in five groups (toddler, 3-7 viewing alone, 3-7 co-viewing, 8-13 viewing alone, 8-13 co-viewing). Pilot testing indicated the efficacy of this system.

Further in-house and field testing of this rating system has been delayed pending an outcome of this proceeding which will provide an opportunity to distribute independent ratings over the nation's television infrastructure in a manner giving parents convenient access to these independent ratings. Without a conclusion to this proceeding favorable to parental access to ratings alternative to the industry's, financing further development and deployment of alternative rating systems is problematic. Although print and Web site distribution would still be possible, parental empowerment will not compare with that which will result if the Commission provides parents with technical means via the "v-chip" for access to independent rating services.

The medical and research community strongly supports provision for a rating system alternative to the industry's, to wit:

..."AMA adamantly supports keeping the technological infrastructure for the ratings system open. In this manner, if alternative ratings systems are later developed that parents would prefer, then such systems would not be foreclosed. After all, the ultimate consumer of the rating systems is parents. And parents should be afforded the opportunity to choose freely among competing rating systems."

American Medical Association
CS Docket 97-55, April 8, 1997

..."It is important to the Academy that no regulatory or legislative limits be created that would preclude the technological opportunity for an alternative system to be broadcast in addition to the industry's rating system should the public desire a choice in the future"...."we recommend the MPAA movie rating system and the universal television rating system be the only systems mandated for inclusion on the V-chip. However, it is our understanding that this does not preclude another rating system from being added to the V-chip in the future. The technical standards that will be established should accommodate such an agreement."

American Academy of Pediatrics
CS Docket 97-55, October 6, 1997

..."we encourage the Commission to find the 'revised industry system' as 'provisionally acceptable' with the guarantee that the technical opportunity is preserved for parents to have equal access to other rating systems which may be developed and introduced as alternatives to the industry proposal."

American Academy of Child & Adolescent Psychiatry
American Psychiatric Association
CS Docket 97-55, October 6, 1997

... "the technological standard for the V-chip should mandate it to accommodate other rating systems as well, and the architecture should remain flexible enough to accommodate future changes in the industry system."

Professor Joanne Cantor

University of Wisconsin

CS Docket 97-55, October 3, 1997

(c.) Technical Feasibility of Distributing Multiple Rating Systems Over the National Television Infrastructure

In addressing this problem, we proposed a data packet consistent with transmission protocol EIA 608 and one which would accommodate not only the proposed industry rating system and its contemplated revision, but also a number of independent child protection rating systems. (Appendix A hereto discusses the applicability of this data packet to the revised rating system of the industry, the MPAA system, Canadian proposals and possibly others which may be developed.)

III. POLICY ANALYSIS

The current NPRM addresses technical considerations related to rating systems. However, in a situation as complex as that involved with protecting children against risks of harm from viewing certain television programs, technical issues cannot be decided in isolation from public interest and policy issues. This is particularly so because the parties which control the technologies involved (TV distributors and equipment manufacturers) have enormous private interests which in many ways are incompatible with the compelling public interest in protecting children from viewing potentially harmful TV programs.

The role of private industry in our competitive society is to profitably provide their individual customers with what they want at a price they will pay. In the instance of television programming, these customers are predominantly adults, or advertisers catering to adults, and often children attracted to view adult or inappropriate programs regardless of the impact on their well-being and healthy development. The fundamental disparity between these private interests and the public interest in protecting children from potentially harmful television has been substantiated by extensive medical and social research over the past twenty years. Congress in Section 551 of the 1996 Act has now recognized in law this compelling public interest by providing that parents have access to both timely information and technology for protecting their children. Provided its implementation is narrowly tailored to serve this interest, Congress has determined that this public interest overrides private interests involved.

- a.) The aim of public policy as enunciated in Section 551 is to help *parents* protect children from viewing potentially harmful programs.

According to its findings the statute seeks to give *parents*, not some other group, the means to control the programming accessible to their children which may be, or which they believe may be harmful. The goal is protection of children, and the chosen means to that end is the opportunity for parents to control what their children may watch on television.¹

¹ Congress found, for example,

Parents express grave concern over violent and sexual video programming and strongly support technology that would give them greater control to block video programming in the home that they consider harmful to their children [;] [t]here is a compelling governmental interest in empowering *parents* to limit the negative influences of video programming that is harmful to children [;] [and] [p]roviding *parents* with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children is a nonintrusive and narrowly tailored means of achieving that compelling governmental interest. 1996 Act, Sections 551 (a) (7)-(9) (emphasis added).

A parent programming a blocking device can specify the child's access only in terms of the rating systems available. With only a single rating system, the parent's degree of control of blocking technology is necessarily limited. A single rating system fixes the sole criteria the parent can use in applying blocking technology to screen the child's programming, and the parent is powerless to change those criteria if they do not suit his or her needs. Multiple rating systems make it possible for parents whose needs are not met by the industry-selected system to tailor their children's viewing according to alternative criteria. This capability directly furthers the policy expressed in Section 551 of giving parents control over their children's access to harmful video programming.

While the industry has revised its system to include content classifications in order to meet demands of parental advocacy groups, another parental concern is not satisfied.

In accordance with an oft-quoted NPTA survey parents strongly prefer access to ratings uninfluenced by commercial considerations....

.."More importantly, parents are of strong belief that they know their child better than anyone. They want to be the ones who decide about the appropriateness of a particular program for their child. They do not want to rely on the opinions of others, particularly members of the television industry, who have a stake in the impact of ratings."

What Parents Want in a Television Rating System:
Results of a National Survey, 1996
Concerns About the Industry rating itself and
Summary of Findings and Implications

Lastly, particularly after experience is gained with v-chips, the industry may further revise or voluntarily develop a new system. Provided the hierarchical and category provisions of the data packet remain the same, such changes by the industry can be readily made without suddenly discontinuing the older system, if Commission

rules provide for multiple rating systems.

b.) Issues of public health and safety are seriously implicated.

A second policy matter is the substantial public safety and health issues involved which have not yet received sufficient attention and which will benefit from multiple ratings. For example, when a vulnerable child is exposed to repetitive depictions of violence, it may induce aggressive behavior. Such learned behavior may be taken by children into the community, placing them at risk of injuring themselves or others. This is clearly not solely a private health issue, but one involving public safety and health as well. OKTV ratings take into account such factors.

From an economic perspective Dr. James T. Hamilton, in surreply comments in Docket 97-55, introduces his analysis with

“parents will consider the reduced likelihood that their children will become aggressive or experience fright in making their decisions about how much effort to devote to monitoring television viewing. Yet parents will not factor in the broader benefits to society from shielding their children from violent programming, such as the reduced likelihood that their children will impose negative costs on others as a result of aggressive or violent behavior. This means that parents will fail to devote enough effort from society’s perspective to protecting their children from violent programming.”

- c.) The objectives of TV educational policy will be advanced by alternative rating systems.

Regarding educational policy, because education is not child protection, education cannot be the primary purpose of transmitting program codes over line 21. However, to block programs harmful to children is to provide more opportunities for attractive educational programs to draw their attention. This effort will be most pronounced in homes using child health-based services. Estimates are that this beneficial effect could be considerably greater than the three hours/week of educational programs required of broadcasters by Commission rules. In other words, the indirect contribution of a child health rating system to the purposes of The Children's Television Act of 1991 will be significant.

IV. LATENCY AND THE CAPACITY OF LINE 21

"Latency" in channel tuning, a measure of blocking delay after channel changes, will also result in the brief transmission of possibly undesirable content. Latency is a function of the number of services to be accommodated. In a practical sense it sets the limit for the manner and number of rating codes carried on line 21, taking account of their priority over all except captioning uses of line 21. Based on filings in Docket 97-55 and press reports, the Commission, in dealing with v-chip issues, is currently faced with one independent service proposal (OKTV), the two U.S. commercial proposals of the MPAA and TV industries, and the question of what to do about commercially based Canadian proposals. EIA Standard 744 will accommodate both U.S. and the Canadian commercial rating systems. In addition, the extension of EIA 744 as discussed in Appendix A hereto will have capacity to accommodate up to seven independent rating systems.

The type of service which offers the most focused protection for children is one based on credible, scientific evidence of harm. On knowledge and belief, the OKTV rating system to date is the only one based on accumulation of 20 years of medical and social research. And because collaboration among the medical societies concerned with child health is well underway to develop one national health-based system as noted in Section II b. above, Commission planning might well assume the high likelihood that only one health-based system will need access to line 21.

Regarding systems that will rate programs based on considerations of educational, cultural, religious, character-building, civic, ethnic or other values, Section 551 of the 1996 Act provides only for child protection through rating systems that block programs which may be harmful to children. In fact, Section 551(b) states "...that nothing in this paragraph shall be construed to authorize any rating of video programming on the basis of its political or religious content;... ." And supporting the statute is of course the First Amendment prohibition on government intrusion into free expression except when narrowly defined to serve the compelling public interest in child protection. Thus, the Commission need not plan to accommodate on line 21 any rating systems which are not narrowly tailored to serve this interest. Further, OKTV business planning indicates that the financial costs of developing, marketing and operating an independent system are major. For these reasons, it is highly unlikely that more than a very few independent systems meeting child protection standards will evolve during analog times.

As for a system based on parental opinions as determined by focus groups, surveys and other market research, earlier thoughts about establishing such a service independent of the industry service have apparently been overtaken by the *"Agreement on Modifications to the TV Parental Guidelines"* adopted by the industry and parental advocacy groups on July 10, 1997. Because of major efforts by these advocacy groups, the industry system apparently adequately reflects parental views at least for

the present. And no independent service based on parental opinion has been proposed. An independent service may later emerge to accommodate parental opinions if the revised industry system does not live up to expectations. But there are other impediments to the success of an independent service based on parental opinion. Most parents are not familiar, and could not be expected to become familiar, with the extensive body of information and research about what content in fact puts children at risk of harm. Further, parents in our pluralistic society come from many ethnic, cultural, religious, geographic and other backgrounds which will make difficult an agreement on a system acceptable to parents generally. And then there will be its vulnerability to a First Amendment challenge because it might not be sufficiently tailored to serve only the public interest in child protection. These factors suggest that dissatisfied parents may use a child health service rather than organize a separate service based on parental opinions.

Lastly, latency limitations are applicable to the analog world but will not be a factor as television becomes digital. Further, date/time/channel systems as discussed below are available as an interim solution should latency become a serious problem before digital television is generally available.

V. DATE/TIME/CHANNEL SYSTEMS

When OKTV was organized and began planning in 1993, the provisions of what would eventually become Section 551 of the 1996 Act could not then be foreseen. OKTV devoted considerable effort to exploring the distribution of its rating codes in a date/time/channel manner using out-of-band technology over cable and satellite TV systems. These investigations included discussions with program schedule companies such as Tribune Data, TV Data and TV Guide as well as investigations of electronic program guides such as StarSight, Prevue and "native" systems. OKTV concluded that

such date/time/channel methods were indeed feasible, and business plans were prepared on this basis. However, when the "V-chip" concept became incorporated in Section 551 and was adopted in Committee prior to passage of the 1996 Act, OKTV shifted its planning to the latter system as being less complicated and less expensive.

We cannot provide quantitative estimates of the differential costs and complexities of the two approaches. However, date/time/channel systems are feasible and could be employed immediately. Many TV sets and set-tops now provide date/time/channel capabilities which can be employed independently of line 21. If the number of systems seeking access to line 21 exceeds its practical limits prior to the onset of substantial digital television, then additional rating systems could employ date/time/channel techniques.

The Commission asked for comments as to whether date/time/channel capabilities should be mandated. Because in its earlier studies OKTV anticipated using such out-of-band distribution of its codes without needing Commission rules, OKTV sees no reason to suggest mandatory FCC rules.

At this time, rather than make a determination of the number of rating systems which can be accommodated on line 21 without undue latency problems, the Commission might be well advised to await market testing and real-life developments, knowing that date/time/channel solutions constitute a reserve and that digital television is on the way. Many other aspects of child protection capabilities will have to evolve and be tested in the market before latency concerns require rules regarding the number of systems to be accommodated on line 21 during the analog "age."

VI. MANDATORY REQUIREMENTS FOR THE USER INTERFACE

In general OKTV believes that adequate features of the user interface will be introduced by manufacturers as the market develops. However, the Commission must adopt three minimum requirements.

Most importantly, parents must of course be able conveniently to select a rating system of their choice if the notion of parental access to independent ratings systems is to have any meaning. Most simply, each rating system could be identified by a single number or icon. Such an approach would require rating services to inform parents only of identifying numbers or icons, thus avoiding more costly on-screen identifications such as alphanumeric descriptions (unless manufacturers choose to provide such an option).

Secondly, as shown in Appendix A to these Comments, both industry and alternative rating services can provide both age-related and content ratings, providing an opportunity for parents to customize their blocking service. They can program their "v-chip" to different levels of each content classification for the age-related classification they select. The simplest, basic service would provide blocking for a given audience, age-related classification at the same level of content classifications. Both the capability for such a basic and customized service should be mandated in order to provide parents with the maximum choice in selecting a rating service for their particular family. Further, the parent should be able to override any rating at anytime to permit their children to view individual programs as parents may wish.

Thirdly, the user must be enabled to call up program ratings any time the program is showing. The industry in its letter of Sept. 10 to the Commission states "larger icons will appear on-screen for 15 seconds at the beginning of all rated programming and through use of a display button thereafter." OKTV also recommends

such capabilities. Whether the rating is an industry rating or an independent rating, it will always be encoded continuously in the signal and is therefore available for display at any time during the program. Such a feature will overcome the inconvenience many parents find with the industry's present practice of displaying the rating for only fifteen seconds at the beginning of each program. From the perspective of OKTV, of many researchers and also of many parents, children viewing by themselves should not be able to see ratings and thus be attracted to "forbidden fruit." And certain advertisers will not be as deterred from placing their messages in programs if warning labels were to be available only "on call" rather than always on display at the beginning of each program. There are many reasons for the industry itself to abandon "in-video" rating displays at the beginning of programs in favor of displays only upon parental request, as noted above. Of importance is the fact that such "on-call" ratings information can be made available immediately for many TV sets and set-tops, without waiting for "v-chip" technology to be incorporated in TV receivers.

CEMA in its comments of October 6, 1997 to the Commission in Docket 97-55 opposes mandating the ability to call up ratings while the program is showing because it "...clearly exceeds the scope of Section 551...." However, as discussed in Section IX below, the Commission has broad authority, sufficient to promulgate rules to provide parents with convenient access to timely rating information as Congress expressly intended in Section 551.

VII. INSERTION OF INDEPENDENT RATING CODES AND ACQUISITION OF PROGRAMS FOR EVALUATION

The problem of inserting independent rating codes requires a Commission rule. As the Commission notes in Paragraph 20, Distribution of Ratings Information, of the NPRM, "For blocking technology to function properly, the program ratings information

must be properly encoded into the video programming” For independent codes meeting the child protection purposes of Section 551 to be delivered for insertion in line 21 by each program distributor would impose far too costly a requirement on rating services, given the number and distribution of transmission sites of television distributors. As the Commission suggests, they must be inserted at the program source.

As regards voluntary insertion of independent ratings by industry, this is hardly likely. The commercial interests in general of both program producers and distributors motivate them to avoid insertion of any code that does not accord with their commercial interests, i.e., which might be perceived as significantly reducing advertising revenues. Market forces might sometimes result in the voluntary insertion of independent codes when the targeted audience is children. However, just as market forces are wont to induce children to eat candy, ice cream and non-nutritious food, similarly program producers seeking advertising support will be reluctant to provide only child-healthy content and ratings. Market forces cannot be relied upon to block programs which children like but which may not be conducive to their healthy development.

In previous filings OKTV has proposed that the Commission seriously consider mandating insertion of codes of independent child protection services in the manner of “must-carry” regulations. In hindsight, “must-carry” is a misnomer for a “must-insert” provision. Without such rules, an independent ratings service will have little opportunity to make its ratings available to parents via line 21, or conversely for parents to obtain access to independent ratings via line 21. Such a rule must provide that if an independent service, meeting whatever criteria the Commission may establish to determine that the system primarily serves the compelling interest in child protection, makes its rating available to a program source, it must be inserted.

One might ask how independent rating services can obtain programs for rating

purposes prior to their distribution. It probably is not necessary that such a requirement be mandated. There is no need for independent services to rate all programs (see April 7 Comments of OKTV, Docket 97-55, paragraph 29, page 19). In the case of most programs of networks and series, they can be rated in a statistically valid manner from programs previously distributed. Regarding new programs, generally they receive publicity prior to distribution. Frequently this information will be sufficient or the program source will cooperate in making more information or tapes available upon request. If not, independent rating services can distribute a blocking code to the program source for insertion along with industry codes. OKTV's covenant with parents is "when in doubt, block it out." In other words, OKTV operations will err on the side of protection in order to assure parents that when they choose OKTV service, programs not blocked will be safe for viewing based on the best scientific evidence available. Some parents may find this approach too restrictive, but that is an issue to be resolved in the marketplace.

VIII. DIFFERENTIAL ECONOMIC IMPACT

The issue for industry is not the cost and complexity of providing for insertion of an independent service, but the differential costs and benefits compared with insertion of only monopoly industry ratings. Because the revised industry proposal has only recently been put before the Commission, quantitative analyses to our knowledge have not yet been made regarding the differential impact of multiple rating systems versus the revised industry TV ratings. However, in a qualitative sense the differential economic costs and benefits can be discussed.

There is but a trivial extra cost for inserting a data packet that will handle multiple ratings as well as industry ratings. Each independent data packet can be inserted by the same conventional equipment which inserts industry codes, and thus

the additional cost of inserting independent ratings is *de minimis*. Further, transmission costs of carrying multiple data packets, all using EIA Standard 608 for the extended data service of line 21, will be the same.

As for receivers, the television industry as well as OKTV is calling for a display feature to permit parents to call on-screen throughout the program the rating information continuously available on line 21. Thus, there is no differential cost here. Further, the cost of providing a parent access to a selection of services is trivially more than providing access to only the industry services.

Lastly, there are the differential costs from lost advertising or subscriber revenues as a result of parents using an independent blocking service compared to such revenue losses under the industry rating system. Industry concerns about advertising losses undoubtedly derive from apprehensions that rating services might be based on criteria not narrowly related to child protection. Thus, the Commission can ameliorate such concerns by clearly limiting rating services qualified for insertion in line 21 to those whose rating criteria relate primarily if not totally to child protection.

IX. COMMISSION AUTHORITY

Section 551 of the 1996 Act requires the Commission to promulgate regulations for blocking devices triggered by program ratings carried on line 21 of the VBI. On its face, the statute neither authorizes nor prohibits the establishment of more than one rating system. Similarly, the statute does not expressly indicate whether or not the Commission can prescribe a protocol for line 21 that accommodates multiple rating systems, or require TV receivers to be capable of selecting among multiple systems. We believe, however, that the establishment of communications and receiver standards which support multiple child protection ratings standards are fairly within the mandate

of Section 551, and hence within the exercise of Commission discretion permitted under Sections 4(i) and 303 of the Communications Act of 1934.

Congress early recognized that it would not be able to foresee every detail of needed communications regulation. Accordingly, Section 4(i) of the Communications Act of 1934 authorized the Commission to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Communications Act], as may be necessary in the execution of its functions.”² Similarly, in the narrower context of radio and TV regulation, Congress separately empowered the Commission, “as public convenience, interest or necessity requires, [to]...[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this [Communications Act.]”³ Another provision requires the Commission to “[s]tudy new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest [.]”⁴ If the Commission determines that multiple child protection standards are reasonably necessary to accomplish Congress’s policy objectives as expressed in Section 551, these provisions will support promulgation of the necessary rules.

The U.S. Supreme Court has long endorsed a generous reading of the Commission’s powers. As early as 1940, it referred to the Communications Act of 1934 as “a supple instrument for the exercise of discretion by the expert body which Congress has charged to carry out its legislative policy [.]”⁵ and recognized “a requirement that the administrative process possess sufficient flexibility to adjust itself”

² 47 U.S.C. § 154(i).

³ 47 U.S.C. § 303(r).

⁴ 47 U.S.C. § 303 (g) Of course, the term “radio” in this context includes television.

⁵ FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 138 (1940)

to the rapid fluctuations characteristic of the broadcasting environment.⁶ For that reason, "the Act gave the Commission not niggardly but expansive powers."⁷ More recently, the Court added, "[W]e may not, 'in the absence of compelling evidence that such was Congress' intention *** prohibit administrative action imperative for the achievement of agency's ultimate purposes.'"⁸

The Commission has previously cited Sections 4(i) and 303 to support its authority in cases analogous to this one. Indeed, when the Commission first authorized non-captioning data transmission on the VBI, in the form of text messages, it relied on these statutory provisions, among others.⁹ Earlier, when the Commission approved ancillary services such as background music on the FM subcarrier, it likewise relied on Sections 303 (g) and 303 (r).¹⁰ And when the Commission expanded use of the FM subcarrier to include non-broadcast operations, it again cited Sections 4(i) and 303.¹¹

In light of these and other precedents, there is little doubt that the Commission has the authority to implement the Congressional policy embodied in Section 551 of the 1996 Act by mandating communication and receiver standards that support multiple child protection rating systems rather than the single system presently contemplated by the TV industry. The Commission can lawfully specify support for multiple ratings to

⁶ Id.

⁷ National Broadcasting Co. v United States, 319 U.S. 190, 219 (1943).

⁸ United States v. Southwestern Cable Co., 392 U.S. 157, 177 (1968), *quoting Permian Basin Area Rate Cases*, 390 U.S. 747, 780 (1968).

⁹ Transmission of Teletext by TV Stations, 53 R.R.2d 1309 (1983). The citations to statutory authority appear in the Notice of Proposed Rule Making, 46 Fed. Reg. 60851 at ¶ 41 (Dec. 14, 1981).

¹⁰ Specified Non-Broadcast Activities on a Multiplex Basis, 19 R.R. 1619, 1626 (1960). This was the Commission's second try, its first having been overturned by the U.S. Court of Appeals on unrelated grounds. Functional Music Inc., 274 F.2d 543 (D.C. Cir. 1958), *cert. denied*, 361 U.S. 813 (1959).

¹¹ Subsidiary Communications Authorizations, 53 R.R.2d 1519, 1534 (1983).

make that technology work in the interest of protecting children as Congress intended. In particular, the Commission has authority not only to provide that parents have access to multiple or independent ratings, but to specify minimum conditions for their effective use in the interest of child protection. As suggested above in these comments, Commission requirements should designate: (1) a data packet for multiple ratings such as recommended in Appendix A hereto; (2) transmission of such a packet using EIA transmission protocols 608 and 744; (3) rules to assure insertion in line 21 of independent services meeting the child protection purposes set forth in Section 551; and (4) receiver equipment functionalities to permit parents to program a rating service of their choice, to select age related and content categories for program blocking, to override a blocking service at anytime, and to access an on-screen display of ratings encoded in line 21 of the VBI.

X. CONCLUSION

The Commission should stand firm behind its proposed rules to accommodate multiple ratings on line 21, to give ratings priority after closed captioning in the use of line 21, and to restrict TV distributors from deleting ratings on line 21. Further, to provide parents with convenient means of access to independent ratings, the Commission must adopt rules requiring insertion of child protection codes which independent services deliver to program sources, must require equipment functionalities to permit parents to access on-screen displays and override ratings encoded in line 21, and must require means for parents to select among multiple rating services according to both age-related and content categories.